



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Doc. No. AMS-FV-14-0046; FV14-945-2 IR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Modification of Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule modifies the container requirements currently prescribed under the Idaho-Eastern Oregon potato marketing order (order). The order regulates the handling of potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon and is administered locally by the Idaho-Eastern Oregon Potato Committee (Committee). This rule removes the requirement that fiberboard cartons used to pack 50-pound quantities of U.S. No. 2 grade potatoes be of one-piece construction. This change is needed to respond to market demands and to provide handlers flexibility in shipping U.S. No. 2 grade potatoes. In addition, this rule makes a change to the order's handling regulations to correct a citation reference.

DATES: [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by [INSERT DATE 60

DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA;

Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Sue.Coleman@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule modifies language in the order's administrative rules and regulations to remove the requirement that fiberboard cartons used to pack 50-pound quantities of U.S. No. 2 grade potatoes must be of one-piece construction. This change will allow handlers to ship U.S. No. 2 grade potatoes in 50-pound fiberboard cartons without regard to the construction of the carton. The requirement that cartons be of natural kraft color and

be permanently and conspicuously marked as to grade will not change as a result of this rule. This rule will enable handlers to respond to market demands and provide greater flexibility in shipping U.S. No. 2 grade potatoes. This rule was unanimously recommended at a Committee meeting on April 22, 2014. In addition, this rule makes a change to the order's handling regulations to correct references in § 945.341(b)(3)(i) and (ii), which currently refers to a paragraph that does not exist: (b)(4)(iii). The correct reference should be (b)(3)(iii).

Sections 945.51 and 945.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of potatoes. Section 945.52(a)(3) specifically authorizes the regulation of size, capacity, weight, dimensions, pack, labeling or marking of the container, or containers, which may be used in the packaging or handling of potatoes, or both.

Section 945.341 of the order's administrative rules prescribes the minimum quality, minimum maturity, pack and marking, and inspection requirements for handling fresh market Idaho-Eastern Oregon potatoes. Section 945.341(c) prescribes the pack and marking requirements for domestic and export shipments of potatoes. Under those

requirements, cartons of U.S. No. 2 grade potatoes must be packed in one-piece 50-pound fiberboard cartons of natural kraft color provided the cartons are permanently and conspicuously marked as to grade. Grade requirements are based on the U.S. Standards for Grades of Potatoes (7 CFR part 51.1540-51.1566).

At its telephone meeting on April 22, 2014, the Committee unanimously recommended the relaxation of the order's container requirements to remove the one-piece construction prerequisite for 50-pound fiberboard cartons. The change was recommended to allow handlers to ship U.S. No. 2 grade potatoes in any type of 50-pound fiberboard cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade.

Handlers reported that food service customers are very concerned about the one-piece 50-pound cartons because they are often damaged in transit. The one-piece 50-pound carton has a structure that is weaker than that of a two-piece 50-pound carton with a bottom and a lid. Despite the structure, the two-piece 50-pound carton is less costly than the one-piece construction and could save handlers between \$400 and \$1,600 per load, depending on the transportation method utilized.

Additionally, handlers expressed the need for the mandatory grade markings to only be required on the top portion of a multi-piece 50-pound carton. This would enable handlers to save money by allowing them to use a uniform, unmarked bottom piece for different grades of potatoes. The lid of the multi-piece 50-pound carton would continue to be required to have the grade permanently and conspicuously marked.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 450 producers of potatoes in the production area and approximately 32 handlers subject

to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000 (13 CFR 121.201).

During the 2012-2013 fiscal period, the most recent for which statistics are available, 35,148,900 hundredweight of Idaho-Eastern Oregon potatoes were inspected under the order and sold into the fresh market. Based on information provided by the National Agricultural Statistics Service, the average producer price for the 2012 Idaho potato crop was \$5.30 per hundredweight. Multiplying \$5.30 by the shipment quantity of 35,148,900 hundredweight yields an annual crop revenue estimate of \$186,289,170. The average annual fresh potato revenue for each of the 450 producers is therefore calculated to be \$413,396 (\$186,289,170 divided by 450), which is less than the SBA threshold of \$750,000. Consequently, on average almost all of the Idaho-Eastern Oregon potato producers may be classified as small entities.

In addition, based on information reported by USDA's Market News Service, the average f.o.b. shipping point

price for the 2012 Idaho potato crop was \$5.87 per hundredweight. Multiplying \$5.87 by the shipment quantity of 35,148,900 hundredweight yields an annual crop revenue estimate of \$206,324,043. The average annual fresh potato revenue for each of the 32 handlers is therefore calculated to be \$6,447,626 (\$206,324,043 divided by 32), which is less than the SBA threshold of \$7,000,000. Consequently, on average most all of the Idaho-Eastern Oregon potato handlers may be classified as small entities.

This rule relaxes the container requirements to allow handlers to ship U.S. No. 2 grade potatoes in any type of 50-pound fiberboard cartons of natural kraft color, provided the cartons are permanently and conspicuously marked as to grade. This will enable handlers to respond to market demands and to provide greater flexibility in shipping U.S. No. 2 grade potatoes. In addition, this rule makes changes to the order's handling regulations to correct a citation reference.

The authority for the establishment of pack and marking requirements is provided in § 945.52 of the order. Section 945.341(c) of the order's administrative rules prescribes the pack and marking requirements for domestic and export shipments of potatoes.

The Committee believes that the recommendation should increase the sale of U.S. No. 2 grade potatoes. This action is expected to further increase the shipments of U.S. No. 2 potatoes to the food service industry and help the Idaho-Eastern Oregon potato industry benefit from the recent increased growth in demand from the food service industry sector. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than large entities.

Prior to arriving at this container recommendation, the Committee considered information from the Idaho Potato Commission and the Idaho Grower Shippers Association. The Committee also discussed several alternatives to this recommendation including leaving the current requirement in place. However, the Committee believed that it was important to be able to respond to changing market conditions and meet customer needs. The Committee will monitor the quantity of U.S. No. 2 grade potatoes shipped in multi-piece 50-pound fiberboard cartons of natural kraft color and evaluate if any further modification to the order's container requirements is necessary.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection

requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 (Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee meeting was widely publicized throughout the Idaho-Eastern Oregon potato industry and all interested persons were invited to attend the meeting and

participate in Committee deliberations. Like all Committee meetings, the April 22, 2014, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:

<http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>.

Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the container requirements currently prescribed under the Idaho-Eastern Oregon potato marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as

hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are currently shipping Idaho-Eastern Oregon potatoes; (2) this action relaxes current container requirements; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

**PART 945 - IRISH POTATOES GROWN IN CERTAIN DESIGNATED
COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 945.341 [Amended]

2. In § 945.341(b)(3)(i) and (ii), remove the reference "(b)(4)(iii)" and add in its place the reference "(b)(3)(iii)".

3. In § 945.341(c)(2)(ii), remove the word "one-piece".

Dated: July 31, 2014

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

[FR Doc. 2014-18606 Filed 08/05/2014 at 8:45 am;
Publication Date: 08/06/2014]